



DEPARTMENT OF LAW
OFFICE OF THE
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STATE CAPITOL
Phoenix, Arizona 85007

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BRUCE E. BABBITT
ATTORNEY GENERAL

June 9, 1976

Honorable Tony Gabaldon
Arizona State Senate
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Dear Senator Gabaldon:

This letter is in response to your letter to this office dated May 13, 1976, in which you requested our opinion concerning whether the proposed school district sick-leave plan outlined in your letter is legally valid, constitutionally and otherwise.

The details of that plan are as follows. Five sick-leave days will be conditionally granted each school district employee at the beginning of the school year. Each such employee will then unconditionally earn sick leave at the rate of one day for each month of service rendered during the school year. Consequently, if an employee's employment with the school district is terminated for any reason at a time when the employee has used in excess of the number of sick days then actually unconditionally earned, that employee will be charged for the excess. Since the school district pays each of its employees for each day worked at least five working days after that day (including paid State holidays), the district can always adjust the employee's last paycheck in an amount sufficient to cover the days of sick leave for which the employee was paid but which eventually he or she did not earn. Thus the school district will not have to attempt to collect any overpayment from a teacher.

Our prior opinions indicate that sick leave is a fringe benefit granted by a school district governing board, and that the permissible parameters of the grant are largely within the wide discretion of the governing board. Op. Atty. Gen. No. 73-21. The statutory power for the grant is implicit in A.R.S. § 15-443, relating to the employment of school district personnel, and in a number of other education statutes. Though recognizing the wide discretion reposed in a governing board in this regard, we nevertheless have concurred in at



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least one County Attorney's opinion^{1/} which indicated that full sick leave could not be granted at the beginning of a school year because it would amount to a gift of public money in violation of Art. IX, Sec. 7,^{2/} of the Arizona Constitution. But upon further reflection, we do not think that the position set forth in the County Attorney's opinion completely withstands analysis.

Art. IX, Sec. 7, generally prohibits a governmental entity of this State from spending or loaning its money for a non-public purpose. It has been construed in a number of judicial decisions of this State, none of which, however, relates to sick leave or fringe benefits. But the general gist of the decisions is that an expenditure will not violate this constitutional provision if it is made for a "public purpose." Town of Gila Bend v. Walled Lake Door Company, 107 Ariz. 545, 549, 490 P.2d 551 (1971); City of Glendale v. White, 67 Ariz. 231, 236, 197 P.2d 435 (1948). In this regard, the Arizona Supreme Court stated, in City of Glendale, that it would not substitute its judgment about the "public purpose" for that of the governing body of the governmental entity unless the latter's exercise of judgment or discretion is shown to have been "unquestionably abused." 67 Ariz. at 238. In summary, not all grants or loans are violative of Art. IX,

1/ Op. Atty. Gen. No. R75-486, Maricopa County Attorney's Office School Opinion No. 75-22. See also, Op. Atty. Gen. Nos. 71-16 and 71-12-L, each of which was decided partially on the ground that the proposed plan there involved violated State statutes.

2/ Art. IX, Sec. 7, reads as follows:

Neither the State, nor any county, city, town, municipality, or other subdivision of the State shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company or corporation, except as to such ownerships as may accrue to the State by operation or provision of law.

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Sec. 7, but only those which are not made for a "public purpose," with the governing board having broad discretion to determine what amounts to a public purpose.

Here, however, it is not necessary for us to determine whether a public purpose exists, because we do not think that any grant in the nature of a gift or loan exists. Sick-leave plans and all other fringe benefits are adopted by school district governing boards after public discussion and after consultation with the school districts' employees. So long as the sick-leave plan and other fringe benefits have been adopted by the school district governing board prior to the time that the school district's employees have entered into their contracts for the ensuing year, all of those fringe benefits are granted in consideration of those employees promising to perform and performing services for the school district for that year. That consideration is valuable and adequate and negates the existence of a gift.^{3/}

Furthermore, the school district under the sick-leave plan described above is not extending credit to any of its employees. Under the usual circumstances, the school district withholds from the employee an amount at least equal to his pay for five days. Upon termination or the end of the school year, this amount is paid to the employee. Under the proposed sick-leave plan, the most that happens is that this withheld salary is offset by the sick leave granted, which means that there is never a net extension of credit from the school district to the employee. Thus, there is no circumstance under which the employee's employment can terminate with the employee owing the school district any money.^{4/} As a result, there is

^{3/} It might be argued that the consideration received by the school district is received in return for not only the sick-leave fringe benefit, but also for the employees' base salaries and all other fringe benefits; and, further, that the consideration allocable to the sick leave fringe benefit should be valued and compared to the value of the sick-leave fringe benefit to see if the latter exceeds the former, which, if true, would result in a gift. But a benefits package is involved, and we do not think it necessary or supportable, under these circumstances, to engage in a calculation of this kind.

^{4/} This assumes, of course, that an employee's pay check is given to him or her at the end of the last day of the week, and not prior to the completion of that day's service.

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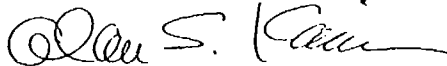
no extension of credit.^{5/}

In conclusion, the proposed sick-leave plan is implicitly authorized by statute and does not violate Art. IX, Sec. 7, of the Arizona Constitution.

Should you have any questions, please let us know.

Sincerely,

BRUCE E. BABBITT
Attorney General



ALAN S. KAMIN
Assistant Attorney General

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^{5/} Because of the terms of the proposed sick-leave plan here considered, it is not necessary for us to determine whether the County Attorney's opinion referred to in footnote 1, *supra*, may be correct in result insofar as the sick-leave plan therein described causes a net extension of credit by the school district. However, that opinion would only be correct in result if there were no public purpose to support the net extension of credit. In this respect, if there were a public purpose to support the extension of credit, that extension would be valid. If valid, the result reached in the County Attorney's opinion and in our concurring opinion is inconsistent with what we have said above and therefore is no longer controlling.